IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 787 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHURAJI CHHAGANJI THAKOR
Versus
STATE OF GUJARAT

Appearance:
MR SP DAVE for Appellant
MR KG SHETH, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 29/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The present appeal arises out of a judgment and order rendered by Additional Sessions Judge, Banaskantha at Palanpur in Sessions Case No.85 of 1993 on June 10th, 1994 convicting the appellant for the offences punishable under Sections 302 and 324 of the I.P.C. and the appellant was sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo S.I. for three months for the offence of murders. He was sentenced to undergo R.I. for three years and to pay a fine of Rs.1,000/-, in default, to undergo S.I. for three months for the offence punishable under Section 324 of the I.P.C.

2. The facts of the case in brief are that on 1st April, 1993, at about 8.30 p.m. one Jivanlal Banaji of village Kunwala, Taluka Deodar, District Banaskantha was approached by the appellant. The appellant demanded money from Jivanlal by way of a loan. Jivanlal refused to give him money. The appellant was annoyed and he, therefore, drew out a knife from his waist-band and inflicted a blow to Jivanlal in the abdomen. This was witnessed by witnesses Nanalal Mohanlal, Ishwarlal Kakaldas and several other persons. Nanalal intervened. The appellant, therefore, inflicted knife blows in the back and on the pinna of the left ear of Nanalal. Ishwarlal also intervened and the appellant inflicted a knife blow on Ishwarlal Kakaldas near his right armpit. Thereafter, the appellant ran away. Injured Jivanlal Banaji, Nanalal Mohanlal and Ishwarlal Kakaldas were taken to the hospital at Deodar. The Medical Officer at Deodar Hospital declared Nanalal Mohanlal dead, on examination. Jivanlal was given primary treatment and was, thereafter, sent to Deesa and from Deesa to Palanpur. While he was under treatment at Palanpur, Jivanlal succumbed to the injuries.

2.1 The injured persons were taken for medical treatment by Shashikant Ramniklal Shah who had also witnessed the incident. He lodged an F.I.R. at Deodar Police Station and an offence came to be registered. The police investigated the offence and ultimately filed chargesheet in the court of JMFC, Deodar who, in turn, after following the procedure, committed the case to the Court of Sessions. Sessions Case No.85 of 1993, thus, came to be registered.

2.2 Learned Additional Sessions Judge framed charges at Exh.2 for the offences punishable under Sections 302, 324 and 504 of the I.P.C.. The accused appellant pleaded not guilty to the charges and claimed to be tried.

2.3 After considering the evidence led by the prosecution, the learned Additional Sessions Judge came to the conclusion that the prosecution was able to prove the charges of murder of Nanalal Mohanlal and Jivanlal Banaji and having caused hurt to Ishwarlal Kakaldas by the appellant. The learned Additional Sessions Judge came to the conclusion that other charges were not proved.

3. Aggrieved by the said judgment and order, the original accused has preferred this appeal.

4. We have heard learned advocate Mr. S.P. Dave appearing for the appellant. He has taken us through the record and proceedings particularly, the evidence of the eye-witnesses. He submitted that the evidence of the eye-witnesses is parrot-like and could not have been accepted by the learned Additional Sessions Judge. Mr. Dave submitted that the case of the accused appellant, as advanced during cross-examination and in the statement under Section 313 of Cr.P.C., has not been considered in its proper perspective. He, therefore, urged that the appeal may be allowed.

5. Learned advocate Mr. Dave, by way of an alternative submission, submitted that the case may be considered as one falling within the purview of Section 304 of the I.P.C.

6. The appeal is opposed to by Mr. K.G. Sheth, learned Additional PP.

7. We have taken a close look at the record and proceedings in the light of the contentions raised by rival sides.

8. The prosecution case is based on the evidence of witnesses Shashikant Ramniklal Shah (Exh.7), Ishwarlal Kakaldas (Exh.25), Hiralal Thakersibhai (Exh.26) and Jayantilal Jeetmal (Exh.27). These witnesses are eye-witnesses to the incident and they have fully supported the prosecution case. They all consistently, in their deposition, said that the appellant demanded money from Jivanlal Banaji and when he denied to lend money, the appellant was annoyed and drew out a knife and inflicted a blow on Jivanlal in his abdomen. The witnesses categorically said that Nanalal Mohanlal and Ishwarlal Kakaldas intervened and they were also assaulted upon by the appellant with knife and unfortunately, Nanalal also succumbed to the injuries.

8.1 The depositions of these witnesses have been tested on the touchstone of cross-examination. We find that they stick to their version and have remained unshaken. The witnesses have denied the suggestion put to them regarding deceased Jivanlal Banaji demanding his dues from the appellant. They have also denied the suggestion that the appellant sought some time which resulted into a quarrel and shouts were raised. They also denied the suggestion that a crowd from Thakorvas came. In the meantime, the appellant escaped. These suggestions are categorically denied by the witnesses.

9. The deposition of the eye-witnesses comes naturally and there appears no reason to doubt its veracity. Each of the witnesses speak of presence of other witnesses. Ishwarlal (Exh.25) has himself sustained injuries. Witness Shashikant (Exh.7) has taken the injured persons to the hospital and has, without any loss of time, lodged the complaint at Deodar. The story emerging in the F.I.R. is consistent with their depositions and lends full corroboration. Under the circumstances, there appears no reason whatsoever to doubt the deposition of as many as four eye-witnesses.

10. Besides the depositions of the eye-witnesses, there is evidence of Dr. Dineshbhai Chandulal (Exh.32) who had performed the post-mortem of Jivanlal. There is evidence of Dr. Pravinbhai Nathalal Solanki (Exh.36) who had performed the post-mortem of deceased Nanalal. The medical evidence also lends support and corroboration to the version that is given by the eye-witnesses.

11. The other evidence are in the form of a panchnama of the place of offence, arrest panchnama and panchnama of discovery of weapon.

12. It is not possible to accept the alternative submission of Mr. Dave for considering the case under Section 304 of the I.P.C.. The incident has taken place on denial on the part of Jivanlal to lend money to the appellant. There is nothing to indicate that the case would fall within any of the exceptions. Apart from this, deceased Nanalal had nothing to do with the transaction between the appellant and Jivanlal. He only intervened and tried to settle peace between the appellant and Jivanlal. He also has been done to death by the appellant and, therefore, the contention of learned advocate Mr. Dave regarding considering the case under Section 304 of the I.P.C. is also not possible to be accepted.

13. Having taken a close scrutiny of the record and proceedings, we do not find any lacuna in the prosecution case nor do we find any error on the part of the learned Additional Sessions Judge in recording conviction. The contentions raised by Mr. Dave do not merit acceptance. The appeal, therefore, deserves to be dismissed and the same is dismissed. The judgment and order of conviction and sentence, impugned herein, stands confirmed.

(M.C. Patel, J.)

(A.L. Dave, J.)

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